STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM C. KAUFFMAN,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,

Defendant-Appellee,

and

DAVID C. HYLAND,

Defendant.

UNPUBLISHED
April 25, 2006

No. 257711
Washtenaw Circuit Court
LC No. 00-001218-NZ

Before: Kelly, P.J., Jansen and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of defendant's motions for summary disposition. We affirm.

Plaintiff is a tenured professor with the University of Michigan. Plaintiff wrote a couple of drafts of a proposal for a design center within the Department of Aerospace Engineering at the University. Those drafts were later revised by another professor and subsequently turned into an abstract for the design center, which was funded by a foundation and opened in 1999.

Plaintiff filed a complaint alleging defendants, through their agent Hyland,[1] had unlawfully stolen and expropriated plaintiff's intellectual property, that he and Hyland had a fiduciary relationship that was breached by Hyland, and that his due process rights were violated by the University's subsequent investigation into the matter. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), which the trial court granted on the grounds that plaintiff had failed to show that defendant had violated his intellectual property

[1] Hyland was dismissed as a defendant by stipulation on May 14, 2003, leaving the Regents as the only remaining defendants.

rights and that plaintiff's allegations did not demonstrate that a fiduciary duty existed between the parties. We agree, and affirm.

Plaintiff first argues on appeal that the trial court was precluded from granting summary disposition under MCR 2.116(C)(10) because there were no affidavits presented, no depositions taken, and defendant's motion did not identify any undisputed fact as required by MCR 2.116(G)(3) and (4). Therefore, plaintiff argues, the trial court could only consider the facial adequacy of plaintiff's complaint, and because it did not, plaintiff is entitled to relief. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank,* 468 Mich 557, 561; 664 NW2d 151 (2003). Our Supreme Court clearly articulated the standards for granting summary disposition pursuant to both MCR(C)(8) and (C)(10) as follows:

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections,* 439 Mich 158, 162; 483 NW2d 26 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163. When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).
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> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co,* 451 Mich 358; 547 NW2d 314 (1996). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).]

We begin our analysis by noting that if summary disposition is granted under one subpart of the court rule when judgment is appropriate under another, that defect is not fatal when the record otherwise permits it. *Brown v Drake-Willock Int'l*, 209 Mich App 136, 143; 530 NW2d 510 (1995). Therefore, summary disposition could have been granted under either subpart of the court rule if the record would permit it.

A motion brought under MCR 2.116(C)(10) must contain affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted. MCR 2.116(G)(3)(b). Further, the motion must "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact." MCR 2.116(G)(4). Taken together, defendants' motions for summary disposition were supported by attached documentary evidence, including both drafts of plaintiff's proposal for the international design

center and the University's abstract for the design center. Moreover, defendants admitted that later versions of the proposal were based on plaintiff's drafts. Defendants, therefore, met their burden under MCR 2.116(G)(3) and (4), and summary disposition pursuant to either MCR 2.116(C)(8) or (C)(10) was appropriate. Thus, plaintiff is not entitled to relief on this basis.

Turning to the merits of defendants' motion for summary disposition, plaintiff next argues that the trial court erred by finding that defendants had no fiduciary duty to plaintiff. We disagree. First, the trial court did not find that defendant had no fiduciary duty to plaintiff; it found that the allegations in plaintiff's complaint did not demonstrate the existence of a fiduciary duty. We agree. A mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action. *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). A fiduciary relationship exists when there is confidence reposed on one side and a resulting superiority and influence on the other. *LaForest v Black*, 373 Mich 86, 92; 128 NW2d 535 (1964). Here, plaintiff failed to allege any facts demonstrating that, as a result of plaintiff's confidence in Hyland, there was a resulting superiority and influence by Hyland. Therefore, summary disposition pursuant to MCR 2.116(C)(8) was appropriate.

Plaintiff also argues that in his complaint he properly alleged that he had a property interest in his proposal and that defendants violated his due process rights, making summary disposition under MCR 2.116(C)(8) inappropriate here. Plaintiff's argument, however, presupposes that summary disposition could not be granted under MCR 2.116(C)(10). As previously noted, we disagree. The record evidence presented to the trial court indicates that, in 1995, plaintiff authored a proposal for an international design center within the Department of Aerospace Engineering that listed two co-authors. Subsequently, a second draft copy of that proposal was done, this time with three others listed as co-authors. The proposal called for a design center with resident visitors of different specialties represented, with a focus on Russian designers. The proposal further notes that Boeing and McDonnell Douglas already had programs to furnish visiting designers and that the University had retired designers teaching courses twice previously.

"To protect an idea under a property theory requires that the idea possess property-like traits." *Sarver v Detroit Edison Co*, 225 Mich App 580, 586; 571 NW2d 759 (1996). "[I]deas themselves are not subject to individual ownership or control. They do not rise to the level of property and are not in themselves protected by law." *Id*. 587 (citations omitted). Plaintiff, therefore, could not "own" the "idea" of a design center, or of a visiting designer program, because those things already existed in other forms.

Moreover, the benefits plaintiff expected to receive from "the use of" his "intellectual property" were the right to have "significant involvement" in the center and to be named director of the center. Plaintiff claims that, according to defendants' rules and policies, the author of a proposal is "automatically the principal investigator." Plaintiff, however, failed to point to any rules or policies promising or even hinting at how those benefits accrued to him. "In ascertaining whether a property interest . . . has been created that is constitutionally cognizable, a person must have more than a mere abstract need or desire for it, he or she must have a legitimate claim of entitlement to it." *Crider v Michigan*, 110 Mich App 702, 728; 313 NW2d 367 (1981). One party's unilateral expectation is insufficient to create a property interest that is protected by procedural due process. *Barr v Pontiac City Comm'n*, 90 Mich App 446, 452; 282 NW2d 348 (1979), citing of *Board of Regents v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed

2d 548 (1972). All of the record evidence presented indicates that plaintiff's interest here is a unilateral expectation, not a legitimate claim of entitlement. Without demonstrating a legitimate property interest, no due process claim may attach. See *Sherrod v Detroit*, 244 Mich App 516, 523; 625 NW2d (2001). Therefore, even if plaintiff's claims were sufficient under MCR 2.116(C)(8), plaintiff is not entitled to relief on this basis because summary disposition was appropriate here under MCR 2.116(C)(10).

Plaintiff's final argument on appeal is that there are potential factual developments that may give rise to a cause of action under several legal theories, including fraud, conversion, interference with an advantageous business expectancy, unjust enrichment, and breach of contract. Again, this argument incorrectly presupposes that summary disposition could not be granted under MCR 2.116(C)(10). Plaintiff was required to establish disputed facts with admissible evidence with respect to its claims at the time of the motion, and the mere promise to offer factual support at trial is insufficient to survive defendant's motion for summary disposition. *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 266 Mich App 297, 305; 701 NW2d 756 (2005). Plaintiff acknowledged at oral argument that discovery was closed at the time of defendants' motion; therefore, the time for factual development had passed. The trial court properly granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michael J. Talbot